IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

RICHARD T. DOUGHTIE, III, as trustee
for the bankruptcy estate of William P. Morrison PLAINTIFF

vs. Civil Action No. 3:93cv163-D-A

THE CITY OF CORINTH, MISSISSIPPI, et al. DEFENDANTS

MEMORANDUM OPINION

Presently before the court is the motion of the plaintiff for an award of attorney's fees on his behalf pursuant to 42 U.S.C. § 1988. Finding that the motion is well taken, the court shall grant the motion and make such an award to the plaintiff in this cause.

. Factual Background

The basic facts underlying this cause have already been addressed by this court and the undersigned finds no justification for repeating them here. Doughtie v. Corinth, Civil Action No. 3:93cv163-D-A (N.D. Miss. July 20, 1995) (Memorandum Opinion and Order Granting in Part and Denying in Part Motion for Summary Judgment). It is sufficient to note that the plaintiff originally brought this civil rights action against the defendants seeking a wide variety of injunctive and monetary relief. After the trial of this matter, this court directed a verdict for the plaintiff on the issue of the constitutionality of a city ordinance.[1] The matter of damages for that claim of the plaintiff, as well as the issues of liability and damages on the plaintiff's remaining

[1] This court entered judgment for the plaintiff against the defendants City of Corinth, the estate of E.S. Bishop, Sr., Lex Mitchell, Mike Shipman and Dewayne Parker. Doughtie v. Corinth, Civil Action No. 3:93cv163-D-A (N.D. Miss. Jan. 29, 1997) (Order of Judgment). For purposes of clarity within this opinion, these parties alone shall be referred to as "the defendants."

claims, was then submitted to the jury. The jury returned a verdict for the defendants[2] on all of the plaintiff's remaining claims, and rendered a damage award in the amount of $1.00 on the plaintiff's constitutional challenge to the city ordinance. The plaintiff now seeks an award of attorney's fees and expenses.

. Discussion

. Attorney's fees awards pursuant to 42 U.S.C. § 1988

The plaintiff seeks an award of attorney's fees pursuant to 42 U.S.C. § 1988. Section 1988 provides in relevant part,

> In any action or proceeding to enforce a provision of [§ 1983,] . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . . .

42 U.S.C. § 1988. "The purpose of § 1988 is to ensure 'effective access to the judicial process' for persons with civil rights grievances. Accordingly, a prevailing plaintiff 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" Hensley v. Eckerhart, 461 U.S. 424, 429, 103 S. Ct. 1933, 1941, 76 L. Ed. 2d 40, 48 (1983) (citations omitted); see Blanchard v. Bergeron, 489 U.S. 87, 89, 109 S. Ct. 939, 103 L. Ed. 2d 67 (1989).

. Whether the Plaintiffs Prevailed

> A plaintiff must be a "prevailing party" to recover an attorney's fee under § 1988. The standard for making this threshold determination has been framed in various ways. A typical formulation is that "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the

[2] The plaintiff did not ultimately prevail on any of his claims against defendants Cliff Boatman, E.G. Holloway, Donald Joe Sanders or Barry Richards. Those defendants were dismissed from this cause. Doughtie v. Corinth, Civil Action No. 3:93cv163-D-A (N.D. Miss. Jan. 29, 1997) (Order of Judgment).

suit." This is a generous formulation . . . .

Hensley, 461 U.S. at 433 (citations omitted). In this case, after a trial on the merits in which the plaintiff pursued numerous claims during which he requested both monetary and injunctive relief, the plaintiff ultimately prevailed on only one claim. That claim netted him $1.00 in nominal damages. While this court did declare § 4-33's unconstitutionality, injunctive relief was not granted in light of the fact that the City of Corinth amended that provision subsequent to the filing of this action.

The Supreme Court has held, however, that a plaintiff who wins nominal damages can be a "prevailing party" under § 1988. Farrar v. Hobby, 506 U.S. 103, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494 (1992). However, the Court also noted that "[i]n some circumstances, even a plaintiff who formally 'prevails' . . . should receive no attorney's fees at all." Farrar, 506 U.S. at 120; Johnson v. Eaton, 80 F.3d 148, 152 (5th Cir. 1996); Salley v. St. Tammany Parish Sch. Bd., 57 F.3d 458, 467-68 (5th Cir. 1995); E.E.O.C. v. Clear Lake Dodge, 25 F.3d 265, 272 (5th Cir. 1994). It is important to this court that a key factor in preventing the plaintiff's attainment of additional relief - in the form of an injunction against the enforcement of an unconstitutional ordinance - was the action on the behalf of the defendants to amend the ordinance during the pendency of this action. The plaintiff did obtain by virtue of this amendment, in addition to nominal damages, some of the ultimate relief he sought as a consequence of filing suit even if it did not come directly from an order of this court. Farrar, 506 U.S. at 120 ("[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff."); Watkins v. Fordice, 7 F.3d 453, 456 (5th Cir. 1993) (discussing "prevailing party" test). As Justice

O'Connor noted in Farrar, "nominal relief does not necessarily a nominal victory make." Riley v. City of Jackson, 99 F.3d 757, 760 (5th Cir. 1996) (quoting Farrar, 506 U.S. at 121).

In this court's opinion, the plaintiff obtained more than a nominal victory in this case. Accordingly, this court finds that the plaintiff is a "prevailing party" and should receive an award of attorney's fees and expenses in this cause. The appropriate amount of those fees and expenses, however, is subject to a separate determination.

. Whether the Fee is Reasonable

The Supreme Court has provided that "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley, 461 U.S. at 433. The product of these two factors — number of hours and the hourly rate — is called the "lodestar." League of United Latin Am. Citizens (LULAC) v. Roscoe Indep. Sch. Dist., 119 F.3d 1228, 1232 (5th Cir. 1997); Von Clark v. Butler, 916 F.2d 255, 258 (5th Cir. 1990). The fee applicant bears the burden of proving the reasonableness of the number of hours claimed. Hensley, 461 U.S. at 437; Cooper v. Pentecost, 77 F.3d 829, 832 (5th Cir. 1996). "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." Hensley, 461 U.S. at 433. The district court may also reduce the award where the hours are "excessive, redundant, or otherwise unnecessary." Id. at 434. The fee applicant also bears the burden of proving the reasonableness of the rate claimed. Blum v. Stenson, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d 891, 900 n.11 (1984). In Blum, the Supreme Court explained,

> To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence — in addition to the attorney's own affidavits — that the requested rates are in line with those prevailing in the

> community for similar services by lawyers of reasonably comparable skill, experience, and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to — for convenience — as the prevailing market rate.

Blum, 465 U.S. at 895 n.11.

Once the lodestar is calculated, the district court must address its reasonableness as a whole. Hensley, 461 U.S. at 434 ("The product of reasonable hours times a reasonable rate does not end the enquiry."); Longden v. Sunderman, 979 F.2d 1095, 1099 (5th Cir. 1992). In doing so, the district court must consider the twelve factors which the United States Court of Appeals for the Fifth Circuit set out in Johnson v. Georgia Highway Express, Inc. Alberti v. Klevenhagen, 896 F.2d 927, 929-30 (5th Cir.), vacated in part on other gounds, 903 F.2d 352 (5th Cir. 1990); Leroy v. City of Houston, 831 F.2d 576, 583 n.11 (5th Cir. 1987), cert. denied, 486 U.S. 1008, 108 S. Ct. 1735, 100 L. Ed. 2d 199 (1988). These factors are

> (1) the time and labor required;
> (2) the novelty and difficulty of the questions involved;
> (3) the skill required to perform the legal service properly;
> (4) the preclusion of other employment by the attorney due to the acceptance of the case;
> (5) the customary fee;
> (6) whether the fee is fixed or contingent;
> (7) the time limitations imposed by the client or the circumstances;
> (8) the amount involved and the results obtained;
> (9) the experience, reputation, and ability of the attorneys;
> (10) the "undesirability" of the case;
> (11) the nature and the length of the professional relationship with the client;
> (12) awards in similar cases.

Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). After considering these factors, the district court may adjust the lodestar upward or downward. LULAC, 119 F.3d at 1232; see also Walker v. United States Dep't of Hous. and Urban Dev., 99

F.3d 761, 771-73 (5th Cir. 1996) (describing limited circumstances in which adjustment to lodestar is appropriate). Of course, although the district court must consider each factor, the court need not act upon any of them. Louisiana Power & Light Co. v. Kellstrom, 50 F.3d 319, 330-31 (5th Cir.), cert. denied, -- U.S. --, 116 S. Ct. 173, 133 L. Ed. 2d 113 (1995); see Uselton v. Commercial Lovelace Motor Freight, Inc., 9 F.3d 849, 854 (10th Cir. 1993) ("[R]arely are all the Johnson factors applicable . . . .").

. Award of Expenses

Additionally, the plaintiff seeks a recovery of expenses related to the litigation of this action, in the total amount of $9,556.94. The court finds that some of the claimed expenses are reasonable and shall be awarded to the plaintiff. The claimed amounts for local telephone calls, however, shall not be awarded. While the plaintiff may recover for long-distance telephone conversations, the expense incurred for local calls is generally not permitted as such an expenditure is not normally charged to a client. See, e.g., Henry v. Webermeier, 738 F.2d 188, 192 (7th Cir.1984); Hertz Corp. v. Caulfield, 796 F. Supp. 225, 229 (E.D. La. 1992). Based upon the court's calculations, that portion of the expense award constituting local telephone calls amounts to $1,036.50. This amount shall be excluded in the computation of expenses, reducing the base amount of expenses to $8,520.44. Additionally, the court finds that the claimed amounts for court reporter expenses are not recoverable as expenses in this matter, as they may be subsumed in the bill of costs levied against the defendants. 28 U.S.C. § 1920. It is impossible for this court to determine this fact, however, because the plaintiff does not provide the court with any detail with regard to these expenses except the label "court reporter expense." As such, the claimed court reporter expenses, totaling $3,743.85, shall also be excluded. With these two

categories of expenses excluded the court find that the remaining amount, $4,776.49, is reasonable and shall be awarded in full to the plaintiff.

. Lodestar Amount for Hon. Phil R. Hinton

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Reasonable Hourly Rate

In his affidavit, Mr. Hinton states that his usual hourly rate was $100.00 at the time the work was performed on behalf of the plaintiff in this cause. Plaintiff's Motion for Attorney's Fees, Affidavit of Phil R. Hinton, ¶ 12 ("Hinton Affidavit"). He states, however, that his hourly rate rose in 1996 to $125.00. Hinton Affidavit, ¶ 12. While Mr. Hinton provides this court with no affidavit proof from other attorneys in his area regarding a reasonable hourly rate, he does express his opinion on the topic:

> At the time this suit was filed, lawyers in Alcorn County, Mississippi, where Corinth is located, charged fees ranging from $80.00 per hour to $125.00 per hour. At present, fees in said area range from $90.00 per hour to $150.00 per hour.

Id. Mr. Hinton's observation of an appropriate hourly rate is in line with the range of hourly rates previously utilized by this court in making attorney's fee awards to attorneys within the Northern District of Mississippi. See, e.g., Laudermilk v. Fordice, Civil Action No. 1:95cv161-D-D (N.D. Miss. Nov. 14, 1997) (Memorandum Opinion and Order awarding attorneys fees) (employing hourly rates of $90.00 and $110.00); Johnson v. Hanes Hosiery, Civil Action No. 2:97cv118-D-B (N.D. Miss. Oct. 23, 1997) (Memorandum Opinion and Order sanctioning counsel and awarding attorneys fees) (employing hourly rates of $90.00 and $125.00); Botts v. Crider, Civil Action No. 1:94cv73-D-D (N.D. Miss. July 24, 1996) (Memorandum Opinion and order awarding attorney's fees) (employing hourly rates of $65.00 and $95.00). In light of this

court's prior awards, the affidavit of Mr. Hinton and this court's knowledge of fees charged by comparably experienced attorneys within this district, the court finds that Mr. Hinton's proffered rate of $100.00 per hour is a reasonable one and shall utilize that rate in the calculation of the lodestar amount.

. Number of Hours Reasonably Expended

The total number of hours claimed by Mr. Hinton for the representation of the plaintiff in this matter is 551.10. After review of the submissions to the court, the undersigned finds that Mr. Hinton's documentation is inadequate. While Mr. Hinton did record the expenditure of his time in increments of a tenth of an hour, numerous entries of the work performed are vague and do not adequately inform this court of the work performed. These entries contain general language, and most of them consist of four words or less. As the Supreme Court warned in Hensley, "[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly." Hensley, 461 U.S. at 433. This court chooses to do so, and shall reduce the amount of claimed hours by one-fourth in light of this scanty documentation. With that reduction in mind, the court determines that 413.33 hours were reasonably expended by Mr. Hinton in this litigation. This number shall be used in determining the lodestar amount.

The court notes that it does not at this juncture attempt to distinguish the number of hours reasonably expended in support of the claim upon which the plaintiff ultimately prevailed. The relationship of the hours expended to the relief sought is more properly considered in evaluating the relevant Johnson factors, particularly factor number eight: the amount involved and the results obtained.

. The Lodestar Amount

When taking the rate of one hundred dollars ($100.00) per hour and multiplying that rate by the measure of (413.33), the court determines that the lodestar amount for consideration in this cause is the total amount of $ 41,330.00. The court must now take up consideration of the extent to which this lodestar amount should be adjusted after an application of the Johnson factors.

. Adjustment to the Lodestar

In evaluating the reasonableness of the lodestar amount in light of the twelve Johnson factors, this court notes that it considered several of the factors in calculating the lodestar itself. For example, the court discussed the first factor, the time and labor required, when it evaluated the number of hours the attorneys worked. Therefore, in evaluating the lodestar, this court will be careful not to double-count these factors. See Walker, 99 F.3d at 771; Shipes v. Trinity Indus., 987 F.2d 311, 320 (5th Cir.), cert. denied, 510 U.S. 991, 114 S. Ct. 548, 126 L. Ed. 2d 450 (1993). That said, the court makes the following observations:

(1) The time and labor required — This matter proceeded through its full course before this court, from the filing of a complaint to the return of a verdict by the jury. Nevertheless, this factor has been adequately considered in the calculation of the lodestar amount. This factor, then, does not warrant an adjustment of that amount.

(2) The novelty and difficulty of the questions involved — While this court is loathe to say that any civil rights litigation is not difficult, the court notes that the complexity and novelty of this case is reflected in the amount of hours reasonably expended in the calculation of the lodestar amount. This factor, then, does not warrant an adjustment to the lodestar amount.

(3) The skill required to perform the legal service properly — This factor has already

been considered by the court in the determination of a reasonable rate of hourly compensation for Mr. Hinton. This factor, then, does not warrant an adjustment to the lodestar amount.

(4) The preclusion of other employment by the attorney due to the acceptance of the case — While Mr. Hinton states to the court that he has in fact been precluded from other employment due to the acceptance of this case, the undersigned does not find that any preclusion caused by the representation of the plaintiff in this matter was unusual or excessive for a lawsuit of this caliber. As such, this factor does not justify an adjustment to the lodestar amount.

(5) The customary fee — The customary fee arrangement in a civil rights action is the acceptance of the fee set by the court or a fee contingently based upon the amount recovered. The court finds that this factor does not warrant any adjustment to the lodat he originally undertook to represent the plaintiff in this action "based on a fee of 50% of all amounts recovered or, in the alternative, the amount awarded by the Court, whichever may be greater." Hinton Aff., ¶ 9. In light of this fee arrangement, the court finds that this factor does not warrant any adjustment to the lodestar amount.

(7) The time limitations imposed by the client or the circumstances — This court is not aware of any significant temporal limitation imposed upon Mr. Hinton in this cause. As such, the application of this factor warrants no adjustment to the lodestar amount.

(8) The amount involved and the results obtained — The defendants allege that only a small portion of the hours claimed by Mr. Hinton bear a sufficient relationship to the results obtained in this case:

> Defendants submit that this Court should award only time which is reasonable for the research of section 4-33's constitutionality and the proportional time spent in drafting the complaint on this issue. Plaintiff's attorney's time entries indicate that he spent 6.2

> hours on researching section 1983 requirements, have two conferences with his client, and preparing a letter to George Cochran. His time entries further establish that he spent 11.7 hours in the preparation of the complaint, preparing discovery, and drafting a letter to the clerk and the city attorney, Bill Odom. . . . .
>
> Defendants submit, however, that at least 90% of the Complaint goes to issues other than section 4-33's constitutionality. In fact, the Complaint is verbose of allegations regarding harassment and abuse of process, all issues which the plaintiff lost. Therefore, it is reasonable to assume that only 10% of this time was actually spent on the issue of section 4-33's constitutionality. Defendants, therefore, submit that a reasonable attorney's fee for this claim is $174.00.

Defendants' Brief, unnumbered pp. 5-6. When considering the extent of the relief sought, as well as the extent of this litigation, the undersigned agrees that this factor warrants a substantial downward departure from the lodestar amount. This court does not, however, agree with the position of the defendants regarding the amount of fees that the plaintiff should be awarded.

This court cannot concur with such a narrow view of the work Mr. Hinton performed in order to obtain both his award of nominal damages and the ruling of this court that section 4-33 of the Corinth City Ordinances was unconstitutional. The plaintiff's work in this regard did not end with the filing of the complaint. Indeed, the defendants forget that when they answered the plaintiff's complaint in this matter, they affirmatively stated their position that the plaintiff was not entitled to any relief whatsoever. This position they maintained until after the presentation of all proof at the trial of this matter, whereupon they acknowledged its infirmity. It was their steadfast refusal to acknowledge the unconstitutionality of this ordinance that necessitated the claim's presentation at trial. To be sure, trial was not the only avenue for the resolution of this claim, but nevertheless the defendants undertook no effort to mitigate the plaintiff's expenses and attorney's fees by conceding the matter early in this litigation. While the plaintiff may not receive a substantial return of the claimed amount, he is nonetheless entitled to a portion of all

the fees and expenses incurred throughout the course of this litigation.

(9) The experience, reputation, and ability of the attorneys — While the prosecution of any civil rights litigation requires a requisite degree of skill and ability, the court has considered this factor in the calculation of a reasonable hourly rate for Mr. Hinton.

(10) The "undesirability" of the case — This case was not desirable. To be sure, this court can take judicial notice of the unfavorable publicity received by the plaintiff in this matter. Further, Mr. Hinton explains in his affidavit:

> This was a highly undesirable case at the time it was filed and an unpopular case through its conclusion. The case itself, and the original client, William Morrison, received a great deal of publicity in Alcorn County, Mississippi. This included several newspaper articles but also a great deal of public discussion. Affiant received telephone calls from members of the public criticizing representation of Mr. Morrison and even received unfavorable comments from fellow members of the Alcorn County Bar. Affiant has in the past represented persons accused of rape and murder without any similar reaction by the public.

Hinton Affidavit, ¶ 13. Representation of a client unpopular to many citizens in the town in which an attorney practices is not a desirable assignment, particularly when the asserted claims involve challenges to city policies or ordinances which are themselves popular. This factor favors an upward adjustment to the lodestar amount.

(11) The nature and the length of the professional relationship with the client — This factor favors no adjustment to the lodestar amount.

(12) Awards in similar cases — The court has considered all of the cases asserted by the plaintiff to represent similar awards in civil rights cases. The court has also taken into consideration cases not cited by the parties, and finds that none of these decisions warrant an additional adjustment to the lodestar amount in this case beyond that already discussed. See, e.g,

TK's Video, Inc. v. Denton Co., 24 F.3d 705, 712 (5th Cir. 1994) (affirming award of 33% of amount requested where plaintiff prevailed on only 7 of 72 claims).

. Adjustment and Calculation

Having carefully considered each factor, this court concludes that a substantial downward adjustment to the lodestar total of $ 41,330.00 is necessary, and shall reduce the lodestar amount by seventy-five percent (75%). In so holding, the court recognizes that while the tenth factor (undesirability of the case) weighs in favor of an enhancement to the lodestar, the eighth factor (results obtained) supports a much more substantial downward adjustment. Application of a factor of .25, *i.e.*, a 75% reduction, to the lodestar amount yields a final award of $10,332.50.

III. Conclusion

After careful consideration, the court finds that the plaintiff's motion for attorney's fees and expenses is well taken and shall be granted. The court does, however, make a substantial reduction in the lodestar amount of attorney's fees awarded, in light of the disparity between the amount involved and the results obtained. With this downward adjustment to the lodestar amount, the court shall award the plaintiff attorney's fees in the amount of $10,332.00. Additionally, the court shall award the plaintiff expenses in the amount of $4,776.49.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of April 2001.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
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RICHARD T. DOUGHTIE, III, as trustee for
the bankruptcy estate of William P. Morrison PLAINTIFF

vs. Civil Action No. 3:93cv163-D-A

THE CITY OF CORINTH, MISSISSIPPI, et al. DEFENDANTS

ORDER GRANTING AWARD OF
ATTORNEY'S FEES AND EXPENSES

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the motion of the plaintiff for an award of attorneys' fees and expenses in this case pursuant to 42 U.S.C. § 1988 is hereby GRANTED;

2) the plaintiff is hereby AWARDED attorneys' fees and expenses for the prosecution of this cause;

3) the defendants City of Corinth, the estate of E.S. Bishop, Sr., Lex Mitchell, Mike Shipman and Dewayne Parker shall pay unto the plaintiff the total sum of $15,108.49 plus accrued interest at the post-judgment interest rate of 5.42 %, to be accrued from the entry of judgment in this matter, January 29, 1997. This sum represents an award of attorney's fees in the amount of $10,332.00 for Mr. Hinton's work and an award of litigation expenses in the amount of $4776.49.

SO ORDERED, this the _____ day of April 2001.

_____
United States District Judge